

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-07-65-RAW
)	
LAURENCE RHEA,)	
)	
Defendant.)	

ORDER

Before the court is the motion of the defendant to alter or amend the court's order of April 25, 2012. Defendant filed a motion for sentence reduction (#39), which the court denied by the referenced order. Defendant evidently made simultaneous submission of the present motion and a notice of appeal. The motion was filed first by the court clerk.

Defendant styles his motion as one pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. The Tenth Circuit, however, considers a §3582(c)(2) motion as one which addresses a criminal matter. *United States v. Randall*, 666 F.3d 1238, 1240 (10th Cir.2011). Although the Federal Rules of Criminal Procedure do not authorize a motion for reconsideration, motions to reconsider in criminal prosecutions are proper. *Id.* at 1241. The court is further persuaded that the filing of the notice of appeal does not deprive this court of jurisdiction to consider the motion. *See United States v. Jackson*, 950 F.2d 633, 635-36 (10th Cir.1991).


Defendant's principal complaint is that the court entered its order before defendant filed his reply. Defendant's motion for sentence reduction was filed March 8, 2012 and the

government response was filed March 19, 2012. Defendant's reply was not filed until April 27, 2012, over a month after the government's response. Local Criminal Rule 12.1(F) does not contemplate reply briefs, and in any event response briefs must be filed within 7 days. Defendant's reply was untimely. The court has nevertheless considered defendant's reply in conjunction with the present motion and is not persuaded the previous ruling is erroneous.

It is the Order of the court that the motion of the defendant (#45) is hereby DENIED.

ORDERED THIS 18th DAY OF MAY, 2012.

Dated this 18th day of May, 2012.


Ronald A. White
United States District Judge
Eastern District of Oklahoma